

Remarks

35 U.S.C. §103(a) Rejection

At present, Claims 1 – 14 are rejected under 35 U.S.C. §103(a) as obvious over Baumgartner (U.S. 6,500,888) in view of Flores et al. (U.S. 4,463,124). Reconsideration of these rejections is requested in view of the above amendments and the following remarks.

Baumgartner, Flores et al., and the present invention pertain to solving the same problem (raising the stick temperature of an ethylene acid copolymer), but do so by different methods. Baumgartner requires that an effective amount of a metal salt of an aliphatic acid having 12 – 22 carbon atoms be used. Baumgartner further uses an aqueous dispersion, not a solution.

Flores et al. is applied in the office action to modify the teachings of Baumgartner to use lower aliphatic acid salts and to do so in an aqueous solution. Applicant respectfully contests this application.

Using a salt of an aliphatic acid having 4 – 10 carbon atoms would be contrary to the requirements of Baumgartner, thus teaching away from the present invention. As such, one skilled in the art would not have any motivation to use a salt of an aliphatic acid having 4 – 10 carbon atoms short of using impermissible 20/20 hindsight. Flores et al. doesn't cure this.

Flores et al. teaches use of a wide variety of aromatic and aliphatic acids and salts and inorganic salts for use in treatment of interpolymers containing pendant –COOH groups, but only claims a solution of an inorganic metal salt and a carboxylic acid salt (See Claim 1. Also, see abstract). The solution can be an aqueous solution or a solution in an organic acid (see col. 3, ll. 29 – 32). The only aliphatic acid salt having fewer than 12 carbon atoms taught in Flores et al. is sodium acetate. There is no basis to pick any one of the many treatment agents of Flores et al. as a substitute for the C₁₂₋₂₂ aliphatic acid salts of Baumgartner other than through impermissible 20/20 hindsight. If one were to do so, it is likely that the selection would be the mixture preferred and claimed in Flores et al.

Accordingly, based on the references taken as a whole, Applicant maintains that the invention as presently claimed is not obvious over Baumgartner in view of Flores et al. and respectfully requests withdrawal of the rejection.

Obviousness-type Double Patenting Rejection

At present, Claims 1 – 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of Baumgartner (U.S. 6,500,888) in view of Flores et al. (U.S. 4,463,124). Reconsideration of these rejections is requested in view of the above amendments and the following remarks.

As pointed out in the office action, a rejection based on nonstatutory double patenting is based on a judicially created doctrine grounded in public policy so as to prevent the unjustified or improper timewise extension of the right to exclude granted by a patent and to prevent possible harassment by multiple assignees. MPEP provides, "In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is — does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?"

In the present case, allowance of the present claims would in no way create any timewise extension of the right to exclude granted in Baumgartner. The claims are not "merely obvious variations."

Baumgartner requires use of an effective amount of a metal salt of an aliphatic acid having 12 – 22 carbon atoms. The present claims solve the problem presented by Baumgartner by using an effective amount of a metal salt of an aliphatic acid having 4 – 10 carbon atoms. There is simply no way that these can be merely obvious variations that would create a timewise extension of the right to exclude under Baumgartner. When the term of Baumgartner expires, anyone could practice the invention claimed in it without infringing the claims of the present case. Likewise, practicing the present invention would not infringe the claims of Baumgartner. Furthermore, based on the amendments and remarks made above, the present invention is not obvious over Baumgartner in view of Flores et al.

As such, an obviousness double patenting rejection cannot stand and Applicant respectfully requests its withdrawal.

Conclusion

In view of the above remarks and the amendments, it is felt that all claims are now in condition for allowance and such action is requested. The Examiner is invited to call Applicant's attorney if the Examiner feels an interview would assist in moving the case to early allowance.

Respectfully submitted,



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